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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/972,790	10/05/2001	David D. Boyd	BYD 327	4149
23581	7590	07/08/2003		6
KOLISCH HARTWELL, P.C. 520 S.W. YAMHILL STREET SUITE 200 PORTLAND, OR 97204			EXAMINER	WEINSTEIN, STEVEN L
ART UNIT		PAPER NUMBER		

1761

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.	09/972790	Applicant(s)	BOYD ET AL
Examiner	S. WEINSTEIN	Group Art Unit	1761

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If no period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

### Disposition of Claims

Claim(s) 1-25 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) \_\_\_\_\_ is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) 1-25 are subject to restriction or election requirement

### Application Papers

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119 (a)-(d)

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

All  Some\*  None of the:

Certified copies of the priority documents have been received.

Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

Copies of the certified copies of the priority documents have been received  
in this national stage application from the International Bureau (PCT Rule 17.2(a))

\*Certified copies not received: \_\_\_\_\_

### Attachment(s)

<input type="checkbox"/> Information Disclosure Statement(s), PTO-1449, Paper No(s). _____	<input type="checkbox"/> Interview Summary, PTO-413
<input type="checkbox"/> Notice of Reference(s) Cited, PTO-892	<input type="checkbox"/> Notice of Informal Patent Application, PTO-152
<input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review, PTO-948	<input type="checkbox"/> Other _____

## Office Action Summary

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-14 and 22-25, drawn to a brewing packet, classified in class 426, subclass 87.
- II. Claim 15, drawn to a beverage producing device, classified in class 99, subclass 287 plus.
- III. Claim 16-21, drawn to a brewing method, classified in class 426, subclass 433.

The inventions are distinct, each from the other because:

Inventions I, II and III are related as a product, an apparatus for using the product and a method of using the product. The product as claimed in Group I can be used in methods and apparatus other than that claimed in Groups II and III. For example, the product as claimed in Group I can be used in any conventional brewing process using any conventional brewing apparatus and not just ones, which are provided with sensors and processors. The product of Group I could even be used in a pot or pitcher with hot water. Also, the device of Group II could be used with cartridges, which do not have encoded information.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art requiring separate searches as shown by their different classification, restriction for examination purposes as indicated is proper.

In addition, the following election of species is made:

This application contains claims directed to the following patentably distinct species of the claimed invention:

There are two generic types of machine interpretable features:

Species A, wherein the machine interpretable feature is electromagnetically detectable.

Species B, wherein the machine interpretable feature is mechanically detectable.

Applicants are required to elect either Species A or Species B.

In addition, if applicants elect Species A, applicant is required to elect one of the following subspecies.

Subspecies A1-the interpretable feature is a color

Subspecies A2- the interpretable feature is a shape

Subspecies A3- the interpretable feature is a glyph

Subspecies A4- the interpretable feature is a text string

Subspecies A5- the interpretable feature is a barcode

Subspecies A6- the interpretable feature is a water mark

If applicants elect Species B, then one of the following Subspecies is required to be elected.

Subspecies B-the interpretable feature are notches

Subspecies B1-the interpretable feature are grooves

Subspecies B2-the interpretable feature are holes

Subspecies B3-the interpretable feature are bumps

Subspecies B4-the interpretable feature are textures

Subspecies B5-the interpretable feature are thickness of flange

Finally, there are also two species of type of data and one of the following types of data is also required to be elected.

Species C wherein the encoded data includes a predefined brewing directive.

Species D wherein the encoded data includes a characteristic of the product.

If Species C is elected, applicants are required to elect one of:

Subspecies C1- wherein the directive is contact time

Subspecies C2- wherein the directive is contact pattern

Subspecies C3- wherein the directive is fluid quantity

Subspecies C4- wherein the directive is fluid temperature

Subspecies C5- wherein the directive is fluid pressure

Subspecies C6- wherein the directive is fluid pass through rate

If Species D is elected, applicants are required to elect one of:

Subspecies D1, wherein the characteristic is grind

Subspecies D2, wherein the characteristic is blend

Subspecies D3, wherein the characteristic is roast

Subspecies D4, wherein the characteristic is quantity

Subspecies D5, wherein the characteristic is bed depth

Subspecies D6, wherein the characteristic is freshness

Subspecies D7, wherein the characteristic is expiration date

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, no claim is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Any inquiry concerning this communication from the examiner should be directed to Steven Weinstein whose telephone number is (703) 308-0650. The examiner can generally be reached on Monday-Friday from 7:00 a.m. to 3:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703) 308-3959. The fax phone numbers for the organization where this application is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0661.

S. Weinstein/dh  
June 18, 2003

Corrected  
July 2, 2003

*Steve Weinstein*  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761

7/8/03